

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

MARK ANDERSON,	:	APPEAL NO. C-100603
	:	TRIAL NO. DR0902133
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MARVA ANDERSON,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Plaintiff-appellant Mark Anderson (“Mr. Anderson”) appeals from the judgment of the Hamilton County domestic relations court that denied his complaint for divorce against defendant-appellee Marva Anderson (“Ms. Anderson”). For the following reasons, we affirm the judgment of the trial court.

Mr. Anderson sought to divorce his wife on grounds of incompatibility and gross neglect of duty. He abandoned the claim of incompatibility, however, after Ms. Anderson answered and denied it.<sup>2</sup>

The trial court held two hearings on the merits. At the first hearing, Mr. Anderson testified that his wife had (1) barely spoken to him; (2) requested that he go to a different church than hers; (3) communicated with him by leaving critical notes

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

<sup>2</sup> See R.C. 3105.01(K) (“The court of common pleas may grant divorces for \* \* \* [i]ncompatability, unless denied by either party.”).

around their home; (4) spent more time with her mother and son from a previous marriage than with him; and (5) used her ex-husband's surname for two-and-a-half years after they were married. Ms. Anderson admitted that she had written her husband notes instead of speaking to him on occasion, that she had spent more time with her mother and son than with her husband, and that she had used her ex-husband's name on some tax forms after she had married Mr. Anderson.

The court held a second hearing for Mr. Anderson to provide corroborating evidence. The parties testified again, largely on the same issues presented in the first hearing. In addition, the parties' neighbor testified that she had twice witnessed Ms. Anderson ignore Mr. Anderson. After the testimony, the court denied the divorce, and this appeal followed.

In his first assignment of error, Mr. Anderson essentially argues that the trial court abused its discretion by not considering evidence that was admissible under Civ.R. 75(M). "An abuse of discretion is 'more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable.'"<sup>3</sup>

According to Civ.R. 75(M), judgments for divorce "shall not be granted upon the testimony or admission of a party not supported by other credible evidence." Thus, a court cannot grant a divorce unless a party's evidence of grounds is corroborated by another witness or other independent evidence.<sup>4</sup>

No abuse of discretion appears in the record. Although the magistrate expressed concern about the little corroboration that the neighbor had provided, the magistrate clearly considered Mr. Anderson's allegations that Ms. Anderson had verified, such as the time she had spent with her mother. Under Civ.R. 75(M), the magistrate properly

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<sup>3</sup> *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

<sup>4</sup> *Condit v. Condit*, 190 Ohio App.3d 634, 2010-Ohio-5202, 943 N.E.2d 1041, at ¶17.

disregarded as uncorroborated Mr. Anderson's allegations that Ms. Anderson neither disputed nor confirmed. We cannot say that this was unreasonable, arbitrary, or unconscionable. Therefore, we overrule Mr. Anderson's first assignment of error.

In his second assignment of error, Mr. Anderson argues that the trial court abused its discretion in denying his divorce after he had provided "abundantly sufficient evidence" of gross neglect of duty. Although R.C. 3105.01 allows a court to grant a divorce for "[a]ny gross neglect of duty,"<sup>5</sup> the statute does not define "gross neglect of duty." Therefore, courts have wide discretion in determining whether the evidence justifies the granting of a divorce on this ground.<sup>6</sup> As a reviewing court, we will not set aside the trial court's judgment absent an abuse of this discretion.

After thoroughly reviewing the record, we cannot say that the trial court acted unreasonably, arbitrarily, or unconscionably in denying the request for divorce on this ground. Accordingly, we overrule Mr. Anderson's second assignment of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 1, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>5</sup> R.C. 3105.01(F).

<sup>6</sup> *Clark v. Clark*, 7th Dist. No. 03 NO 208, 2004-Ohio-1577, at ¶10. See, also, *Patterson v. Patterson* (July 22, 1982), 8th Dist. No. 43707 ("The term 'gross neglect of duty' is not subject to precise definition and its basis as a ground for divorce under R.C. 3105.01 is determined by the circumstances of each case.").